IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8958 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

G S R T C

Versus

MANUBHAI M BELIM

Appearance:

MR HARDIK C RAWAL for Petitioner

MR MUKESH H RATHOD for the Respondent.

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 17/03/2001

ORAL JUDGEMENT

1. This Special Civil Application under Article 227 of the Constitution of India is filed by the Gujarat State Road Transport Corporation against the Award of the Labour Court, Bhavnagar passed in Reference (LCB) No.378 of 1988. The respondent herein was serving as a Conductor at the relevant time. On 13.3.1983, he was on

duty on the aforesaid post of Conductor en route Mahuva-Rajkot. He was subjected to chargesheet on the ground that, on the relevant day, he did not issue tickets to certain passengers, though amount was received in advance. On the aforesaid basis, departmental enquiry was initiated against him and by an order dated 22nd April, 1988, he was dismissed from service. The aforesaid dismissal was the subject matter of the said reference as the concerned workman had raised Industrial Dispute under Section 10 of the Industrial Disputes Act.

2. It seems that, before the Enquiry Officer, the department relied upon certain signed statements of passengers making complaint of non-issuance of ticket. It was the say of the concerned workman that such statements were taken behind his back. He also asserted during enquiry that he had not taken any amount from the passengers without issuance of ticket. It is also the say of the workman that as per the Way Bill, the issuance of tickets is properly shown. In substance, he denied the charges levelled against him. However, the Enquiry Officer found the concerned workman as guilty, and on that basis, the State Transport Corporation passed the aforesaid order of dismissal. The Labour Court came to the conclusion that there is a strong defence in favour of the workman about Way Bill and that there was no reason not to believe the said Way Bill, which showed the exact nature of receipt of the amount and the issuance of ticket. The Labour Court also came to the conclusion that witnesses, on the basis of whose statement proceedings were initiated, were not examined by the Department. Considering the totality of circumstances and the evidence in the domestic enquiry, the Labour Court came to the conclusion that the case of defalcation has not been proved beyond reasonable doubt. The aforesaid finding is given in paragraph 9 of the Award. Under these circumstances, the order of reinstatement without any back wages was awarded by the Labour Court. The aforesaid order was passed as back as in September, 1989.

3. This Court, while admitting the matter on 22.1.1991, has also not granted any interim relief and Advocates of both the sides submitted that the concerned workman has already been reinstated in service since long. Accordingly, the order of reinstatement has already been complied with by the Department and about 12 years have passed after the Award was declared by the Labour Court.

4. Mr.Raval for the petitioner-Corporation argued

that, looking to the fact that in the domestic enquiry, it is proved and established that the concerned workman had not issued tickets in spite of accepting the amount, it would be a case of misappropriation and, therefore, this is not a case in which any order of reinstatement should have been passed. He further submitted that, in any case, reinstatement without back wages can never be considered as an adequate punishment considering the misconduct of the workman. He further submitted that looking to the facts of the case, powers under Section 11A was not required to be exercised by the Labour Court.

5. Mr.Rathod, for the respondent, on the other hand, argued that since more than 10 years, the concerned workman is already in service and that it will be too harsh now to send him back, especially when the Department has already accepted the Award by reinstating him in service.

6. The Labour Court, while considering the facts and circumstances of the case, came to the conclusion that it cannot be said that the concerned employee was guilty of misconduct and that the Department has failed to prove, beyond doubt, the fact that the concerned workman had misappropriated the amount. However, in my view, during domestic enquiry, on the available evidence, if misconduct was found to have been proved, the said finding could not have been upset by the Labour Court by applying the principle of proving the case beyond reasonable doubt. After all, these are not criminal trials and, in domestic enquiry, even on the basis of probability also, conclusion can be arrived at by the Disciplinary Authority. It is also, no doubt, true that normally, in such cases, where allegation is about misappropriation, powers under Section 11A are not required to be used in a routine manner or in a liberal manner. But, in the instant case, the concerned workman has already been reinstated in service since more than a decade and this being a petition under Article 227 of the Constitution of India, I do not think that it is a fit case in which after such a long time, order of disciplinary authority regarding dismissal of the workman concerned is required to be restored.

7. Mr.Rathod at this stage has relied upon the judgment of the Honourable Supreme Court in Gujarat State Road Transport Corporation v. U.A. Malek, 2001 (I) LLJ 180. In the said case, the workman employed in the establishment was charged with misappropriation of money by the Corporation by not issuing tickets to the passengers on certain dates. After the enquiry, he was

dismissed from service. The Labour Court allowed the Reference partially by directing the S.T. Corporation to provide employment to the workman afresh without back wages. The said Award was confirmed by the High Court and when the matter was carried further to the Supreme Court, it was observed by the Supreme Court that the concerned workmen has been in service from 1982 onwards pursuant to the Award by the Labour Court and in those circumstances, it was found that it will not be just and proper to upset the present state of affairs when the respondent workman was found to have been employed for such a long period. In the instant case also, it is not in dispute that he has already been reinstated in service since long and, therefore, while exercising my powers under Article 227 of the Constitution of India, I do not find it proper to upset the present status. However, Mr.Raval for the Corporation argued that, in order to see that there may be some deterrent effect on the workman, he should not have been allowed to go scot-free without any punishment worth the name.

8. Mr.Rathod, on the other hand, submitted that he has no objection if the order of the Labour Court is substituted by imposing some penalty. In the facts and circumstances of the case, therefore, while confirming the order of reinstatement, I direct that the concerned workman should be subjected to the penalty of withholding of three increments with future effect. The order of the Labour Court is accordingly modified. So far as the order of reinstatement without back wages is concerned, the same is confirmed. However, the concerned workman will be subjected to further penalty of withholding of three increments with future effect and it will come into force from the date of the order of dismissal. It is clarified that this order is passed in view of the facts and circumstances, especially when since long, the present respondent is in service by way of reinstatement in compliance with the order of the Labour Court. This order, therefore, may not be treated as a precedent in any other cases as it has been passed in the facts of the present case only. The petition is accordingly partly allowed to the extent indicated above. Rule is made absolute to the aforesaid extent with no order as to costs.

17th March, 2001 (P.B. Majmudar, J.)

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(apj)